



THE HIGH COURT OF SWAZILAND REX

Vs

ELLEN SHOMBI MASEKO

Criminal Case No. 316/2002

Coram

S.B. MAPHALALA - J

For the Crown

MRS WAMALA

For the Defence

MR. Z. MAGAGULA

**SENTENCE
(21/06/2004)**

At this stage of the proceedings three competing interests arise for the proper balance by the court. The nature of the crime, the interest of society and the interest of the accused. These were stated in the judgment of Jones J in the case of *S vs Qamata 1997 (1) S.A.* at page **480** where the learned Judge stated the following:

"It is now necessary for me to pass sentence, it is proper to bear in mind the chief objectives of criminal punishment namely; retribution, the prevention of crime, the deterrence of criminals and the formation of an offender. It is also necessary to impose a sentence, which has a disproportionate regard for the nature of the offence, the interest of the offender and the interest of the society.

In weighing these considerations, the court should bear in mind the need firstly to show the understanding and the compassion for the weaknesses of human beings~and the reasons why they serious crimes by avoiding an overly harsh sentence.

Secondly, to demonstrate the outrage of society at the commission of serious crimes by imposing an appropriate and if necessary a severe sentence. And see to pass sentence which is balanced, sensible and motivated by some reasons and which therefore meet with the approval of the majority of law-abiding citizen.

If I do not, the administration of justice would not enjoy the confidence and respect of society".

In the instant case, the accused person pleaded to a lesser crime of culpable homicide, where the Crown accepted the plea and the matter proceeded in the normal way. This is a serious matter where life has been lost in such tragic circumstances.

I have considered the personal circumstances of the accused person as advanced by **Mr. Fakudze** on her behalf. The accused as it has been shown has previous convictions. In my view, these previous convictions do not have much bearing to the present case as the last one occurred about ten (10) years ago. I am not going to consider them in the present case.

In my considered view, a proper sentence in the present case would be as follows:

The accused is sentenced to seven (7) years imprisonment, 4 years of which is suspended for a period of three (3) years on condition that the accused is not convicted of an offence in which violence is an element committed during the period of suspension. The sentence is backdated to the 29th July 2001.


S.B. MAPHALALA
JUDGE